IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE**

**and**
**THE HON'BLE MR JUSTICE M.NARAYANA REDDY**

**WRIT PETITION NO : 22566 of 2004**

Between:

Swinder Kaur, W/o. Late Man Mohan Singh,
R/o. 43-4-1, Subbalakshmi Nagar, Visakhapatnam.

**..... PETITIONER**

AND

Recovery Officer, Debts Recovery Tribunal, Dwarakanagar, Visakhapatnam.

**.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order or direction more particularly one in the nature of writ of mandamus declaring that the proclamationof sale issued by the respondent in R.P.No.187/02 in O.A.No.928/97 and R.P.No.188/02 in O.A.No.930/97 dt. 5.11.2004 auctioning the petitioner's 1/2 share in house bearing No.43-4-1, Subbalakshmi Nagar, Visakhapatnam on 9.12.2004 is highly arbitrary, bad and illegal arbitrary, bad and illegal and pass such other order or orders as deem fit and proper.

**Counsel for the Petitioner:MR.P.PRABHAKAR REDDY**

**Counsel for the Respondent : MR.ARAJASHEKAR REDDY (SC FOR CG)**

**The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)**

Petitioner has questioned the action of the respondent in issuing proclamation of sale in R.P. No. 1/87/02 in O.A. No. 928/97 and R.P. No.188/02 in O.A. No. 930 of 1997 dated 5.11.2004.

Petitioner claims title to the extent of ½ share in house bearing No. 43-4-1, Subbalakshmi Nagar, Visakhapatnam and states that when action was sought to be initiated for sale of the property, objections were filed before the Recovery Officer under Rule 11 of Schedule II of Income Tax Act, 1961 (for short 'the Act') stating that Rule 11 of the Act is applicable to the Recovery of Debts due to Banks and Financial Institutions Act,1993. Claim was rejected by the Recovery Officer. Therefore, in consonance with the right conferred in Clause 6 of Rule 11 of the II Schedule, suit was preferred by the petitioner to establish her right over the property claimed by the respondent, in which it is stated that interim injunction was granted. Despite injunction, proclamation of sale has been issued. Therefore, this writ petition has been filed.

Therefore, filing of writ petition, in the aforementioned circumstances, is wholly mis-conceived. Petitioner has to work out the remedies in accordance with the provisions of the Act and the procedure laid down for recovery of tax and in case

there is any order of injunction granted by competent Court, and it has been violated, petitioner has adequate remedy to initiate action against the respondent, but, cannot approach this Court by invoking its extraordinary jurisdiction.

The writ petition is accordingly dismissed. No costs.

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DEVINDER GUPTA, CJ

Date: 8th December, 2004

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M. NARAYANA REDDY, J

Pnb

To

1 The Recovery Officer, Debts Recovery Tribunal, Dwarakanagar,

Visakhapatnam.

2 Two C.D.copies